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Follow-up report on management irregularities causing financial losses to the Organization

Report of the Secretary-General

Summary

The present report was prepared in response to General Assembly resolution 53/225 of 8 June 1999, in which the Assembly requested the Secretary-General to submit a detailed report on management irregularities causing financial losses to the Organization. As recommended by the Advisory Committee on Administrative and Budgetary Questions in paragraph 4 of its report (A/53/954), the report takes into account the earlier reports on the subject (A/AC.243/1994/L.3 and A/49/418) issued in 1994 and, pursuant to paragraph 2 of the resolution, includes "procedures for determining gross negligence and the financial and other responsibilities to be incurred by those who have committed such negligence, and preventive measures to identify the risk factors that expose the Organization to management irregularities and measures to improve internal control and accountability".

The report outlines the procedures which the Secretary-General is developing for determining gross negligence and for the effective implementation of staff rule 112.3 for financial recovery. This includes the expansion of the mandate of the Joint Disciplinary Committee in dealing with cases of gross negligence. The report also indicates recent measures taken to establish a more effective accountability mechanism and to improve internal control, which the Secretary-General believes will significantly contribute to the prevention of management irregularities.

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I. Introduction

1. At its fifty-third session, the General Assembly, in its resolution 53/225 of 8 June 1999, having considered the report of the Secretary-General on management irregularities causing financial losses to the Organization (A/53/849), requested the Secretary-General to submit a detailed report to the General Assembly at its fifty-fourth session on the same subject through the Advisory Committee on Administrative and Budgetary Questions. The present report has been prepared in response to that resolution.

2. As recommended by the Advisory Committee in its report (A/53/954), the General Assembly, in resolution 53/225 requested that the present report take into account two previous reports, the overview by the Secretariat (A/AC.243/1994/L.3) and the report of the Ad Hoc Intergovernmental Working Group of Experts established pursuant to General Assembly resolution 48/218 A (A/49/418), to study the possibility of the establishment of a new jurisdictional and procedural mechanism or of the extension of mandates and improvement of the functioning of existing jurisdictional and procedural mechanisms. Additionally, the Assembly requested that the present report include procedures for determining gross negligence and the financial and other responsibilities to be incurred by those who have committed such negligence, and preventive measures to identify the risk factors that expose the Organization to management irregularities and measures for improvement in internal control and accountability (resolution 53/225, para. 2).

II. Definition of gross negligence

3. A definition of gross negligence that can be automatically applied without interpretation to any particular situation is practically impossible to formulate. What constitutes gross negligence in any particular instance is fact-specific and requires a case-by-case review of the particular circumstances involved. Generally, "gross negligence" has been defined in a legal opinion contained in the *United Nations Juridical Yearbook* as "negligence of a very high degree involving wilfulness, recklessness or drunkenness and, in consequence, manifest disregard for the safety of life and property."[1] That legal opinion further provides:

> "We have examined the concept of 'gross negligence' and the equivalent concepts as they appear in various legal systems. The various legal systems concur in this description of 'gross negligence'. Few legal systems go into much more detail in the definition, and the determination in each case is reached by the 'fact finder', i.e. jury or judge (analogous to the Property Survey Board in the United Nations administrative context)."[2]

4. In addition, the United Nations Administrative Tribunal has opined on the definition of "gross negligence". In Judgement No. 742, *Manson* (1995), the Tribunal held that:

> "Gross negligence involves an extreme and reckless failure to act as a reasonable person would with respect to a reasonably foreseeable risk. Thus, to establish gross negligence, a far more aggravated failure to observe the 'reasonable person' standard of care must be shown than in the case of ordinary negligence." (para. XIV)

5. As supported by various legal opinions, it has been the policy of the Organization since 1969 that proof of gross negligence or wilful misconduct is required to justify a staff member being held accountable for losses to the Organization.

III. Procedures for determining gross negligence and financial and other responsibilities to be incurred by those who have committed gross negligence

A. The basis for procedures to determine gross negligence

6. The Secretary-General's report indicated that "procedures need to be established for determining (i) whether there was 'gross negligence' in a specific instance and (ii) what financial responsibility, if any, should be incurred by those who have committed 'gross negligence'" (A/53/849, para. 8).

7. As indicated in paragraph 3 above, what constitutes gross negligence is fact-specific and requires the application of the legal definition of gross

negligence on a case-by-case basis under the particular circumstances involved. The Secretary-General's report referred to existing statutory provisions, such as financial rule 114.1 and staff rule 112.3, which provide for actions to be taken for the recovery of financial losses to the Organization.

8. The Secretary-General is of the view that the statutory basis for imposing financial liability for gross negligence is staff rule 112.3. While there are other rules (such as financial rules 114.1 and 110.14[3]) on the basis of which financial recovery may be made from staff members, a finding of gross negligence is not necessarily required under them. Given that the emphasis of the present report should be on financial liability for gross negligence in connection with management irregularities, the discussion below focuses only on the implementation of staff rule 112.3.

9. The primary purpose of staff rule 112.3 is for restitution, that is, to make the Organization whole for the financial losses suffered. It should be noted that restitution differs from a disciplinary measure, which is provided for under staff rule 110.3, which is a sanction.[4]

10. So far, in practice, staff rule 112.3 has not been applied to seek recovery for staff members' gross negligence, other than in the context of losses of property addressed by the Property Survey Boards, as indicated in paragraph 15 of the present report. The General Assembly in its resolutions 51/226 of 25 April 1997 and 53/221 of 7 April 1999 stated that staff members should be responsible and accountable to the Secretary-General for gross negligence under staff rule 112.3 and that procedures should be established for implementation of the rule. The United Nations Administrative Tribunal has also expressed the view that staff rule 112.3 could be invoked by the Secretary-General to recover financial losses suffered by the Organization as a result of serious maladministration.

B. Procedures under development for determining gross negligence and implementing staff rule 112.3

11. Implementation of staff rule 112.3 must ensure that the due process rights of staff members will be protected in respect of such implementation. Due process would generally be viewed as requiring at least notification to the staff member of an allegation of gross negligence and an opportunity to rebut the allegation. The application of staff rule 112.3 would therefore include preliminary fact-finding, notification to the staff member of an allegation of gross negligence, an opportunity to rebut the allegation and a referral to an advisory body, which would make a recommendation to the Secretary-General concerning the determination of gross negligence and the possible restitution. Bearing these requirements in mind, the Secretary-General is in the process of developing the procedures for determining gross negligence and implementing staff rule 112.3, as outlined below. These procedures reflect that in many, if not most instances, cases of gross negligence will involve acts of misconduct.

Stage 1. Preliminary investigation

12. Given the possible seriousness of the consequences for staff members, when there is an allegation of "gross negligence", it would be appropriate to conduct a preliminary investigation, as in the case where an allegation of misconduct is made. Since heads of departments/offices have been conducting preliminary investigations in connection with allegations of misconduct, they are familiar with the manner of conducting such investigations. Therefore, the Secretary-General considers that the investigation of allegations of gross negligence by managers should be conducted by the heads of departments/offices as well. Since the investigation and the determination of gross negligence require legal guidance, it is considered that such guidance and assistance should be made available by the Office of Human Resources Management and the Office of Legal Affairs if necessary. A request may also be made to the Office of Internal Oversight Services to conduct a preliminary investigation.

13. After the preliminary investigation is completed, the heads of departments/offices (or the Office of Internal Oversight Services) would report to the Secretary-General as to whether the allegation appears to be substantiated (including the amount involved) and whether the proceedings for recovery under staff rule 112.3 should be instituted. If it appears that the matter also involves possible misconduct, allegations of such misconduct will be considered in the course of the same proceedings.

Stage 2. Actions following the preliminary investigation

14. Based on the recommendations that result from the preliminary investigation, the Secretary-General will consider appropriate action in respect of the following possible results:

- **Possible result I. Allegation not substantiated.** In cases where the allegation of gross negligence is not substantiated, no further action is required. The case would therefore be closed;
- **Possible result II. Gross negligence.** In cases where the evidence indicates that gross negligence occurred, the Secretary-General will decide on the most appropriate course of action, which may include referring the case to the Joint Disciplinary Committee or an already existing body for a recommendation concerning the possible implementation of staff rule 112.3. In this regard, the mandate of the Joint Disciplinary Committee should be expanded in order to address such cases. To that end:

  (i) The relevant staff rules will be amended to provide for an expansion of the mandate of the Joint Disciplinary Committee to consider cases of staff charged with gross negligence and to make recommendations for recovery under staff rule 112.3;

  (ii) The membership of the expanded Joint Disciplinary Committee, when considering cases of gross negligence, will be designated on a case-by-case basis to take into account the level of the staff members concerned;

  (iii) An experienced legal officer will participate in the deliberations of the expanded Joint Disciplinary Committee on an ex officio basis to guide the members in the proceedings when considering such cases.

C. Financial liability for property losses

15. Acts of gross negligence may also result in property losses to the Organization. When financial losses result from property losses, the cases are referred to the Local Property Survey Board and, if so required, the Headquarters Property Survey Board. The mandate and the composition of the Property Survey Board are provided for in financial rule 110.32. The recommendations of the Headquarters Property Survey Board are submitted to the Assistant Secretary-General for Central Support Services and the Controller for approval. The terms of reference of Property Survey Boards at locations away from Headquarters and of Local Property Survey Boards are similar to those of the Headquarters Property Survey Board (see financial rules 110.33 and 110.34). The Headquarters and Local Property Survey Boards establish their own procedures (ST/SGB/1998/15, sect. 4).

16. The criteria and guidelines for determining gross negligence resulting in property losses have been established. While the Secretary-General is of the view that such property losses are not necessarily related to "management irregularities", it appears that the existing mechanisms for assessing financial liability for property losses arising from gross negligence are functioning satisfactorily. Under the current mechanism, a staff member who is dissatisfied with the findings of the Property Survey Boards can appeal to the Joint Appeals Board regarding the decision to recover, from him or her, property losses.

D. Recovery actions and procedures

17. The Advisory Committee in its report (A/53/954), requested information on the steps taken to explore the feasibility of recovery from the pension benefits of the individuals concerned. The Committee had made this request previously in paragraph 53 of its October 1992 report (A/47/500). The Secretary-General in his report of November 1993 had provided information on recovery of funds from the pension benefits of staff members (A/48/572, paras. 4-10). In the same report he had indicated that "attempts by the Administration to obtain direct recovery of indebtedness from the pension entitlements of staff members were rejected in the past by the United Nations Administrative Tribunal, which held that the Regulations of the United Nations Joint Staff Pension Fund, promulgated by the General Assembly, precluded recovery of amounts due to the Organization from the pension benefits of separated staff" (ibid., para. 6). Thus, until and unless the United Nations Joint Staff Pension Board recommends, and the General Assembly approves, an appropriate

amendment to the Regulations of the Pension Fund, such recovery procedures are not feasible.

18. In some cases, however, individual consensual arrangements have been made to obtain recovery from pension benefits. For example, in the case of a staff member of the United Nations Conference on Trade and Development (UNCTAD) (see A/53/811), an agreement was made to reimburse the Organization from the staff member's pension benefits. The staff member received the Pension Fund payment initially and then paid the United Nations Office at Geneva.

IV. Preventive measures and identification of risk factors that expose the Organization to management irregularities

19. Measures to reduce risk factors and promote good management practices are essential in preventing management irregularities. The ability of the Organization to identify and address risk factors and learn from past mistakes is critical to preventing management irregularities. Risk factors that might expose the Organization to management irregularities include unclear procedures and guidelines, inadequate segregation of duties, as well as a lack of management monitoring, training, adequate security arrangements and adequate supervision. Management monitoring is therefore central to the prevention, assessment and correction of management irregularities.

20. Measures such as clear rules and regulations, adequate internal controls and an oversight mechanism and an environment which promotes good management will discourage irregularities and reduce risks, thereby reducing the risk of management irregularities. A good example may be found in the lessons learned from the case of overpayment of mission subsistence allowance in the United Nations Iraq-Kuwait Observation Mission (UNIKOM), as a result of which a new mission subsistence allowance policy was promulgated in administrative instruction ST/AI/1997/6 of 20 October 1997, which clarified and simplified policies for payment. The decreased potential for varying interpretations and applications has not only reduced the risk of error, but also provided a more effective basis for accountability.

A. Measures to improve internal controls

21. Adequate internal controls will to a great extent detect, prevent and assist in correcting irregularities. The Secretary-General has taken measures to improve internal controls in the following areas:

- **Strengthened budgetary and accounting controls.** The ongoing application of budgetary and accounting controls constitutes the most effective preventive measure in financial management. These controls are being strengthened regularly on the basis of recommendations by the oversight bodies;
- **Publication of the Guidelines for Internal Control Standards**. As indicated in the reports of the Secretary-General on the Guidelines for Internal Control Standards (A/52/867 and A/54/427), the Secretary-General will take steps to ensure publication of the Guidelines as widely as possible, including on the United Nations Intranet;
- **Revision of article I of the Staff Regulations and chapter I of the 100 Series of the Staff Rules.** This revision was implemented pursuant to General Assembly resolution 52/252 of 8 September 1998 and includes changes to chapter I of the 200 and 300 Series of the Staff Rules, bringing them in line with the revisions to article I of the Staff Regulations, which came into effect as of 1 January 1999. These regulations and rules, together with the commentaries thereto, are set out in Secretary-General's bulletin ST/SGB/1998/19 of 10 December 1998, entitled "Status, basic rights and duties of United Nations staff members". The relevant provisions are indicated in the annex to the present report;
- **Streamlining human resources rules and procedures documentation.** With a view to ensuring easy and uniform electronic access resulting in the consistent application of human resources rules and procedures, the Office of Human Resources Management has identified and abolished 127 obsolete or redundant Secretary-General's bulletins, administrative instructions and information circulars since January 1999 and streamlined rules into single issuances governing particular subjects. An electronic handbook for these rules and procedures will be made

accessible to all staff by the end of 2000. It is also envisaged that a number of task tools such as guidelines and forms will be included in the electronic handbook;

- **Updating of the 1954 *Standards of Conduct in the International Civil Service* of the International Civil Service Advisory Board.** The Standards of Conduct have recently been reviewed and updated by a tripartite working group convened by the International Civil Service Commission. The revised draft standards of conduct will be before the Commission at its fifty-first session in April 2000.

B. Measures to improve accountability

22. As part of the measures to establish a more effective accountability mechanism, the role of senior managers has been recognized as essential. In this regard, the Secretary-General has taken a comprehensive approach to enhancing accountability measures at the top management level as well as at all other levels of the Secretariat.

Accountability at the top management level

23. In order to lay a solid foundation for more effective accountability at the top management level, the following measures have been or are being undertaken:

- **Performance management for senior managers.** Performance management for senior managers in the overall scheme of accountability continues to be of primary importance. To formalize and further strengthen this process in line with Secretary-General's bulletin ST/SGB/1999/18 on the Performance Appraisal System, the heads of departments will submit to the Secretary-General at the beginning of each year a "programme management plan" that will identify their goals along with measurable performance indicators. The plan will include both programme objectives and objectives for the effective management of their human and financial resources. The senior managers will also have to provide information on their achievements for the previous year, measured against the predetermined performance indicators. The Secretary-General will review annually with the senior managers how well they have achieved their goals and fulfilled their responsibilities during the period concerned. Accountability for effective management of human and financial resources by managers and supervisors at other levels in the Organization will be maintained, *inter alia*, through the Performance Appraisal System process.

- **Accountability Panel.** An Accountability Panel, to be chaired by the Deputy Secretary-General and composed of several senior managers, is being established to advise the Secretary-General on any matters relating to accountability. To assist the Panel in carrying out its work, the Department of Management will synthesize findings of oversight bodies (including the Office of Internal Oversight Services, the Board of Auditors and the Joint Inspection Unit), highlight cases of significant failure of management supervision and systemic problems relating to programme, financial and human resources management and make recommendations to improve management systems and procedures. On the basis of these findings and analyses, the Panel will make recommendations on actions required to remedy systemic management weaknesses, management irregularities and any other matters which may have a major impact on management issues, so that the Organization can build the work of oversight bodies more closely into the Organization's accountability framework at the top management level.

- **Monitoring of delegated authority.** The process of delegating decision-making to programme managers does not remove from the Department of Management its attendant responsibilities for ensuring that the Organization's financial and human resources are properly managed. To meet these responsibilities, the Department is strengthening its monitoring systems.

Whenever these or other actions that may be introduced affect the conditions of work, the Secretary-General will consult with the staff in accordance with staff regulation 8.1 (a).

Measures at other levels

24. Other recent developments which have had an impact on accountability issues for the totality of staff include:

- **More effective management monitoring (oversight) and performance systems.** Strengthening the identification and correction of "management irregularities" can best be achieved by line managers. The Department of Management has been taking steps to improve management monitoring and reporting. This will ensure that line managers have the information required to identify irregularities and take appropriate action. This also applies to the regular monitoring of internal controls to determine their effectiveness.

- **The role of oversight bodies.** A significant development was the establishment of the Office of Internal Oversight Services in 1994. Aside from cases of fraud, the Office's Investigation Section receives allegations of mismanagement, abuse of authority, negligence, waste of resources, misconduct and other malfeasances. In cases where evidence adduced by the Office of Internal Oversight Services indicates that fraud has been committed, it has consistently recommended criminal prosecution in the relevant national jurisdiction and/or disciplinary review in the internal justice system. In addition, the Office has provided a range of investigative services and advice, as well as liaison with national authorities in actual investigations, which have contributed to several positive and tangible outcomes.

- **Definition of the Organization's core values and core and managerial competencies.** The model of organizational core values and organizational competencies, set out by the Secretary-General in ST/SGB/1999/15 of 13 October 1999, indicates that "integrity" is a core value of the Organization and "accountability" an essential core competency. Behavioural indicators — descriptions of behaviours that exemplify the values and competencies in practice — clearly indicate, *inter alia*, the expectation that staff will operate in compliance with organizational regulations and rules and take prompt action in cases of unprofessional or unethical behaviour.

- **Management training.** The competencies are being reinforced through mandatory managerial development programmes, including the People Management Programme, which has now been attended by some 95 per cent of all staff at the D-1 and D-2 levels, as well as a majority of staff at the P-4 and P-5 levels who have supervisory or managerial responsibilities. Since 1997, increasing emphasis has been placed on managerial development programmes and programmes to increase capacity in United Nations administration, including procurement, budget and finance, and personnel, as well as training courses in peacekeeping administration.

V. Conclusions

25. With regard to measures to handle and prevent management irregularities, the present report indicates a number of developments which took place after the issuance of the two earlier reports on the subject (A/AC.243/1994/L.3 and A/49/418), as well as the more recent report of the Secretary-General (A/53/849). While there were existing provisions set out in the Staff Rules and the relevant administrative instructions, it was deemed necessary to develop procedures for determining gross negligence and to ensure the efficient implementation of staff rule 112.3 for financial recovery. In this regard, the Secretary-General is in the process of establishing procedures so that when there is an allegation of "gross negligence", heads of departments/offices (or the Office of Internal Oversight Services) will conduct preliminary investigations. In cases where the evidence indicates that gross negligence occurred, the matter will be dealt with under the revised Joint Disciplinary Committee procedures with expanded mandate and revised composition, while the current Joint Disciplinary Committee procedures will continue to deal with cases of misconduct, not involving gross negligence. As part of his programme for management reform, the Secretary-General has introduced a number of measures to establish a more effective accountability system, including mechanisms at the top management level, such as the programme management plan, the Accountability Panel and monitoring of delegated authority. Measures have also been taken to strengthen internal controls. The Secretary-General believes that a comprehensive approach to accountability, backed up

by all of these measures, will contribute significantly to detecting and preventing management irregularities.

Notes

[1] See legal opinion dated 30 June 1981 from the Office of Legal Affairs to the Assistant Secretary-General, Office of Financial Services, on "'gross negligence' on the part of a staff member, resulting in damage to United Nations property – criteria to be applied in determining whether gross negligence is involved", *United Nations Juridical Yearbook 1981*, pp. 165-166.

[2] See footnote 31 to the opinion, ibid.

[3] Financial rule 110.14 provides that: "(a) The Controller may, after full investigation, authorize the writing-off of losses of cash and the book value of accounts receivable and notes receivable deemed to be irrecoverable, except that the writing-off of amounts in excess of $10,000 shall require the approval of the Secretary-General", and "(b) The investigation shall, in each case, fix the responsibility, if any, attaching to any official of the United Nations for the loss. Such official may be required to reimburse the loss either partially or in full ..."

[4] However, from the point of view of staff members, recovery under staff rule 112.3, in practice, may be construed as a form of sanction similar to a "fine", which is one of the disciplinary measures provided for under staff rule 110.3 (a).

Annex

The revision of article I of the Staff Regulations and chapter I of the 100 Series of the Staff Rules *(effective from 1 January 1999)*

Staff regulation/rule	*Relevant provision*	*Commentary in ST/SGB/1998/19*
Staff regulation 1.2 (r)	*"Staff members must respond fully to requests for information from staff members and other officials of the Organization authorized to investigate possible misuse of funds, waste or abuse."*	• This regulation "seeks to ensure that staff members clearly understand that they must cooperate with official investigations by the Organization and must supply information on their official actions to, for example, the internal or external auditors." (p. 23)
Staff rule 101.2 (a)	*"Disciplinary procedures set out in article X of the Staff Regulations and chapter X of the Staff Rules may be instituted against a staff member who fails to comply with his or her obligations and the standards of conduct set out in the Charter of the United Nations, the Staff Regulations and Rules, the Financial Regulations and Rules and all administrative issuances."*	• This provision "will ensure that staff are held accountable through disciplinary procedures for failure to comply with their obligations and the standards of conduct set out in the Charter of the United Nations, the Staff Regulations and Rules, the Financial Regulations and Rules and all related issuances." (p. 24)
Staff regulation 1.3 (a)	*"Staff members are accountable to the Secretary-General for the proper discharge of their functions. Staff members are required to uphold the highest standards of efficiency, competence and integrity in the discharge of their function and their performance will be appraised periodically to ensure that the required standards of performance are met."*	• This provision, *inter alia*, "now explicitly places on managers the duty to make proper appraisals of performance" and stipulates that "an integral part of the performance of managers is to properly manage the human, financial and other resources entrusted to them." (p. 32)
Staff rule 101.3 (a)	*"Staff members shall be evaluated for their efficiency, competence and integrity through performance appraisal mechanisms that shall assess the staff member's compliance with the standards set out in the Staff Regulations and Rules for purposes of accountability."*	• This rule "makes explicit that the efficiency, competence and integrity required of staff by the Charter and staff regulation 1.3 (a) will be evaluated and that they will be held accountable to maintain the required standards. (p. 33) • "Supervisors will be assessed not only on their technical competence but also on the way in which they utilize the staff placed under their direction." (p. 34)